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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/411,106 10/04/99 ALLEMAN

G L-12396

EXAMINER

IM31/0731

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COOKE, C

ART UNIT

PAPER NUMBER

1725

DATE MAILED:

07/31/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/411,106

Applicant(s)

ALLEMAN ET AL.

Examiner

Colleen P Cooke

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1725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-31 and 48-82 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 and 48-82 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

*Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 48-61 and 73-82 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In Claim 48, line 5 recites, as amended, "...said at least one front wheel and said at least one rear wheel rotating about *axes* positioned on said base..." (emphasis added). The claim before amendment was drawn to *axles* of said front and rear wheels positioned on said base. The change from claimed axles to axes constitutes new matter. There is not support in the specification for this change. Likewise, new independent claim 74 claims in lines 4-6, "...said at least one front wheel and said at least one rear wheel rotating about axes positioned on said base..." In addition, claim 56 changes "axles" to "axes."

Claims 62-70 and 76-81 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. These claims recite various spacing limitations of the front axle relative to the front edge or the rear axle relative to the rear edge of the base of the undercarriage. These limitations constitute new matter, as there is no support in the original disclosure concerning the limitations of the spacing of the front or rear axles relative to the front or rear edges, respectively.

Claims 71-73 and 82 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. These claims each further limit their parent claims by reciting that the center of gravity of the welder lies on or between the axles when the welder is in both a tilted and a non-tilted position. There is support in the original disclosure for the center of gravity in a *tilted* position being between the two axles. However, there is no support in the original disclosure for the center of gravity being between the axles in a *non-tilted* position.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 29, 30, and 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims all recite the limitation that the base of the undercarriage is "rearwardly rotatable about said rear wheels between a fully tilted position and a non-tilted position" in lines 1-2 of each claim. This is unclear because it does not appear that the base is indeed "rearwardly rotatable" because it does not appear that the base in fact rotates about the rear wheels at all. Further clarification is required.

### ***Response to Arguments***

Applicant's arguments filed 6/6/01 have been fully considered but they are not persuasive. Applicant argues, with respect to claims 1 and 3, that Figure 1 of Karpoff (5730891) cannot be relied upon to teach that "the rear axle and front casters are spaced at less than about

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three times the sum of the radii of the front and rear wheels.” In support of this argument, applicant cites In re Wright 193 USPQ 332, 335 (CCPA 1977) as referred to in Hackerson-Halberstadt, Inc. v. Avia Group International, Inc., 55 USPQ2d 1487, 1491 (CAFC 2000). In re Wright details the finding that "Absent any written description in the specification of quantitative values, arguments based on measurement of a drawing are of little value." This is in the context of actual quantitative measurement of drawings to teach that a chime length of roughly ½ to 1 inch for a whiskey barrel. Similarly, the HHI v. Avia case concerned “precise proportions” of elements in a drawing. The figure of Karpoff is not relied upon to teach specific dimensions, proportions, or measurements, but instead a rather broad and general relation between parts of an undercarriage - a spacing of “*less than about* three times the sum of the radii of the front and rear wheels” (emphasis added). This relation is broad by the use of “less than about” and also because the radii, and thus the sum of the radii, of the front and rear wheels is not claimed or specified. Thus, there are no specific quantitative values being derived from the drawings and so this argument is not persuasive.

Applicant cites the same argument regarding claims 2-31, 48-50, 52-60 and also new claims 62-73, which depend from either of claim 1 or claim 48.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-18, 22-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karpoff et al. (5730891), in view of Sueshinge et al. (6129166) and Magda (4926768).

With respect to claims 1 and 3, Karpoff et al. teaches an undercarriage (see Figure 1) for supporting a welder (PS) on a base which has a top surface parallel to a ground surface. This undercarriage also has two front wheels (14, 16) and two rear wheels (20, 22) rotatably secured to a rear axle (24) which are also of greater radius than the front wheels (see Figure). Karpoff et al. does not teach a front axle for the front wheels, a push bar, the center of gravity of the welder being between the front and rear axles, or that the axles are spaced at less than about three times the sum of the radii of the front and rear wheels. Although Karpoff et al. does not teach that the center of gravity of the welder being between the front and rear axles (because Karpoff does not teach a front axle), Karpoff et al. does teach an undercarriage where the center of gravity of the welder would be between the rear axle and the front casters. Although Karpoff et al. does not teach that the axles are spaced at less than about three times the sum of the radii of the front and rear wheels (because Karpoff does not teach a front axle), Karpoff et al. does show in Figure 1 that the rear axle and front casters are spaced at less than about three times the sum of the radii of the front and rear wheels.

Sueshinge et al. teaches a four-wheeled cart (see Figures 1 and 2) having front and rear wheels (2R,L and 3R,L) rotatably attached to front and rear axles (44 and 28). Sueshinge et al. teaches that the cart has extended handles (9R,L), similar to those disclosed by the applicant but for the push bar connecting the left and right side handles. In addition, although not specifically disclosed, Figure 1 shows that the axles are spaced at less than about three times the sum of the radii of the front and rear wheels.

Magda teaches a cart (see Figures 1, 2) similar to that taught by Karpoff et al. and Sueshinge et al. including a push bar (84), where the radius of the rear (68) wheels is greater than that of the front (26) wheels (Column 5, lines 13-15). Magda also shows in Figure 1 that the rear axle and front casters are spaced at less than about three times the sum of the radii of the front and rear wheels.

Karpoff et al., Sueshinge et al., and Magda are analogous art because they are from the same field of endeavor, which is a wheeled cart. It would have been obvious to modify Karpoff et al. by attaching front wheels by an axle because it is a functional equivalent of the caster-type wheels used. It would have been obvious to modify Karpoff by using a push bar because Karpoff teaches that the undercarriage "with an appropriate handle to move the welder and undercarriage manually between locations (see Column 1, lines 15-16)."

With respect to claims 2 and 4, it would appear that Karpoff et al. shows in Figure 1 that the rear axle and front casters are spaced at about 1.5 or less than about 1.5 times the sum of the radii of the front and rear wheels. It would also appear, from Figure 1 that Sueshinge et al. teaches that the rear and front axles are spaced at about 1.5 or less than about 1.5 times the sum of the radii of the front and rear wheels. Likewise, it would appear from Figure 1 of Magda that the rear axle and front casters are spaced at about 1.5 or less than about 1.5 times the sum of the radii of the front and rear wheels. It would be impossible to space the axles any closer than 1 times the sum of the radii of the front and rear wheels.

With respect to claims 5 and 6, Karpoff et al. teaches, as seen in Figure 1, that there are side flanges (70) extending downwardly and to which axle 24 is attached.

With respect to claims 7, 8, 22 and 23, Karpoff et al. teaches a front flange in a bumper assembly (see Figure 1 and Column 7, lines 23-27).

With respect to claims 9 and 10, Karpoff et al. teaches front wheels positioned rearwardly of a front edge and rear wheels positioned forwardly of a rear edge (see Figure 1).

With respect to claims 11 and 12, Sueshinge et al. teaches a brake mechanism (Column 8, lines 28-44), in the form of a drum brake. This braking mechanism is a functional equivalent of the brake plate mechanism claimed. Karpoff et al. and Sueshinge et al. are analogous art because they are from the same field of endeavor, which is a wheeled cart. It would have been obvious to modify Karpoff et al. to include a braking mechanism because this would allow one to transport such a cart with a heavy welder, with ease.

With respect to claims 13, 14, and 15, Sueshinge et al. teaches a segmented bar, including a base section, a middle section, and a handle section (see Figure 1). Sueshinge et al. does not teach that the handle section is perpendicular to the ground surface but it would be obvious to do so for ease of handling. Karpoff et al. and Sueshinge et al. are analogous art because they are from the same field of endeavor, which is a wheeled cart. It would be obvious to use the bar of Sueshinge et al. on the cart of Karpoff et al. because Karpoff teaches that the undercarriage should transport the welder with ease and have a handle to move the undercarriage and welder manually (see Column 1, lines 12-16).

With respect to claims 16, 17, and 18 the push bar of Magda could also be used as a lift bar (see Figure 1). Karpoff et al. and Magda are analogous art because they are from the same field of endeavor, which is a wheeled cart. It would have been obvious to modify Karpoff by



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using a push bar because Karpoff teaches that the undercarriage "with an appropriate handle to move the welder and undercarriage manually between locations (see Column 1, lines 15-16)."

With respect to claims 24 and 25, Karpoff et al. teaches a base at least equal in length and width to a welder (see Figure1).

With respect to claims 26, 27, and 28, although none of the references explicitly teach that a side flange has three axle openings in it, the number of openings would obviously be dependent only upon the number of axles required. However, combining the teachings of rear and front wheels attached to a base by an axle (Sueshinge et al.) with the teaching of a push bar attached to a base (Magda) would lead one ordinary skill in the art to modify the base for all three to be attached to the base by means of three separate axles, each axle requiring a hole in the base.

With respect to claims 29, 30 and 31, the cart of Karpoff et al. may certainly be tilted about the rear wheels to a slight enough degree that the center of gravity of the welder would still fall between the rear and front axles.

Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karpoff et al. (5730891), in view of Sueshinge et al. (6129166) and Magda (4926768), and further in view of Momberg (4062430).

Karpoff et al., Sueshinge et al., and Magda teach the undercarriage as described with respect to claims 1, 18, and 20 above. None of these references teaches a hook arrangement secured to a push bar.

Momberg teaches a hook arrangement secured to a push bar (see Figures 1 and 4). Karpoff et al., Sueshinge et al., Magda and Momberg are analogous art because they are from the same field of endeavor, which is a pushable, wheeled carrier. It would have been obvious to modify Karpoff et al. by having a hook on the push bar "around which may be wound or looped the electric cord for storing the latter when the appliance is not in use (Momberg, abstract)."

Claims 48-50, 52, 54, 56-57, 61, and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karpoff et al. (5730891), in view of Magda (4926768).

With respect to claims 48-50, 52, 54, and 74, Karpoff et al. teaches an undercarriage (see Figure 1) for supporting a welder (PS) on a base that has a top surface parallel to a ground surface. This undercarriage also has rotatably secured to its base (12), two front wheels (14, 16) and two rear wheels (20, 22). The rear wheels are rotatably attached by mean of an axle (24) and are also of greater radius than the front wheels (see Figure 1). Karpoff et al. does teach an undercarriage where the center of gravity of the welder would be between the rear axle and the front casters and that the rear axle and front casters are spaced at less than about three times or less than two times the sum of the radii of the front and rear wheels. Karpoff et al. does not teach a push bar.

Magda teaches a cart (see Figures 1, 2) similar to that taught by Karpoff et al. including a push bar (84), where the radius of the rear (68) wheels is greater than that of the front (26) wheels (Column 5, lines 13-15). Magda also shows in Figure 1 that the rear axle and front casters are spaced at less than about three times the sum of the radii of the front and rear wheels.

Karpoff et al. and Magda are analogous art because they are from the same field of

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endeavor, which is a wheeled cart. It would have been obvious to modify Karpoff by using a push bar because Karpoff teaches that the undercarriage "with an appropriate handle to move the welder and undercarriage manually between locations (see Column 1, lines 15-16)."

With respect to claim 56, it would appear that Karpoff et al. shows in Figure 1 that the rear axle and front casters are spaced at about 1.5 or less than about 1.5 times the sum of the radii of the front and rear wheels. Likewise, it would appear from Figure 1 of Magda that the rear axle and front casters are spaced at about 1.5 or less than about 1.5 times the sum of the radii of the front and rear wheels. It would be impossible to space the axles any closer than 1 times the sum of the radii of the front and rear wheels.

With respect to claim 57, Karpoff et al. teaches front wheels positioned rearwardly of a front edge and rear wheels positioned forwardly of a rear edge (see Figure 1).

With respect to claim 61, the push bar of Magda could also be used as a lift bar (see Figure 1). Karpoff et al. and Magda are analogous art because they are from the same field of endeavor, which is a wheeled cart. It would have been obvious to modify Karpoff by using a push bar because Karpoff teaches that the undercarriage "with an appropriate handle to move the welder and undercarriage manually between locations (see Column 1, lines 15-16)."

With respect to claim 75, it would appear that Karpoff et al. shows in Figure 1 that the rear axle and front casters are spaced at about 1.5 or less than about 1.5 times the sum of the radii of the front and rear wheels. It would also appear, from Figure 1 that Sueshinge et al. teaches that the rear and front axles are spaced at about 1.5 or less than about 1.5 times the sum of the radii of the front and rear wheels. Likewise, it would appear from Figure 1 of Magda that the rear axle and front casters are spaced at about 1.5 or less than about 1.5 times the sum of the radii of the

front and rear wheels. It would be impossible to space the axles any closer than 1 times the sum of the radii of the front and rear wheels.

Claims 53, 55, and 58-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karpoff et al. (5730891), in view of Magda (4926768), further in view of Sueshinge et al. (6129166).

Karpoff et al. and Magda et al. teach the undercarriage as described with respect to claim 48 above. Karpoff et al. does not teach that the front wheel is attached by means of an axle. Sueshinge et al. teaches a four-wheeled cart (see Figures 1 and 2) having front and rear wheels (2R,L and 3R,L) rotatably attached to front and rear axles (44 and 28). Karpoff et al., Sueshinge et al., and Magda are analogous art because they are from the same field of endeavor, which is a wheeled cart. It would have been obvious to modify Karpoff et al. by attaching front wheels by an axle because it is a functional equivalent of the caster-type wheels used.

With respect to claims 53 and 55, although neither Karpoff not Sueshinge et al. teaches that the wheels are attached to a spindle, it would be obvious to use a spindle instead of an axle as the two are functional equivalents.

With respect to claims 58 and 59, Sueshinge et al. teaches a brake mechanism (Column 8, lines 28-44), in the form of a drum brake. This braking mechanism is a functional equivalent of the brake plate mechanism claimed. Karpoff et al. and Sueshinge et al. are analogous art because they are from the same field of endeavor, which is a wheeled cart. It would have been obvious to modify Karpoff et al. to include a braking mechanism because this would allow one to transport such a cart with a heavy welder, with ease.

With respect to claim 60, Sueshinge et al. teaches a segmented bar, including a base section, a middle section, and a handle section (see Figure 1). Sueshinge et al. does not teach that the handle section is perpendicular to the ground surface but it would be obvious to do so for ease of handling. It would be obvious to use the bar of Sueshinge et al. on the cart of Karpoff et al. because Karpoff teaches that the undercarriage should transport the welder with ease and have a handle to move the undercarriage and welder manually (see Column 1, lines 12-16).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

#### ***Conclusion***

Any inquiry concerning this or earlier communications from the examiner should be directed to Colleen Cooke, whose telephone number is 703-305-1136.

If attempts to reach the examiner by telephone are unsuccessful, her supervisor, Thomas Dunn, can be reached at 703-308-3318. The official fax number for the organization where this

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application or proceeding is assigned is 703-305-6078. The unofficial fax number for this examiner is 703-746-3048.

Any inquiry of a general nature relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is 703-308-0661.

CPC 7/30/2001

  
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